

Appendix F

Grant of Environmental Restriction and Easement

GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT

42 U.S.C. § 9601, *et seq.* [, and M.G.L. c. 21E, § 6]

[reference Chapter 21E only if MassDEP is a Grantee]

*[Note: This instrument is established as an institutional control for a federal Superfund site pursuant to _____ *[add reference to Governing Agreement and any separate agreement with the landowner]*, as set forth below, and contains a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT running to [the UNITED STATES on behalf of its ENVIRONMENTAL PROTECTION AGENCY] *[include the following only if MassDEP is a Grantee:]* [and/or] [the MASSACHUSETTS DEPARTMENT of ENVIRONMENTAL PROTECTION]]*

Disposal Site Name: _____
Site Location: _____ [Town/City], MA
EPA Site Identification Number: _____
MassDEP Release Tracking No. ____ - _____

This GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT (the "Grant") is made as of this ____ day of _____, 20____, by _____, of _____ *[insert property owner's address]* ("Grantor").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of that [those] certain parcel(s) of [vacant] land located in _____ *[insert Town/City]*, _____ County, Massachusetts, [with the buildings and improvements thereon], pursuant to [a deed recorded with the _____ Registry of Deeds in Book _____, Page _____]; *[or insert source of title other than by deed]*; and/or [Certificate of Title No. _____ issued by the Land Registration Office of the _____ Registry District];

WHEREAS, said parcel(s) of land, known and/or numbered as _____, which is [are] more particularly bounded and described in Exhibit A ("Legal Description of the Property"), attached hereto and made a part hereof (the "Property"), is [are] subject to this Grant. The Property is shown on [a plan entitled "_____" prepared by _____, dated _____, recorded with the _____ Registry of Deeds in Plan Book _____, Plan _____], and/or on [Land Court Plan No. _____] [shown as Lot _____];

[WHEREAS, that [those] certain portion(s) of the Property subject to restrictions has [have] been designated _____ *[list names of each type of restricted area, such as "Area A" or "the Cap Area" - this reference, legal descriptions and survey plan*

must use internally consistent terminology [(collectively, all of the foregoing restricted areas comprising] the "Restricted Area");]

[WHEREAS, the Restricted Area is bounded and described in Exhibit A-1 ("Legal Description of the Restricted Area"), attached here to and made a part hereof;]

[WHEREAS, the Restricted Area is shown on a plan *refers to a survey plan showing the restricted area and perimeter of each subdivided lot comprising the portion of the Property where the Restricted Area is located*] consisting of _____ sheet(s), entitled "Plan of Restricted Area" prepared by _____, dated _____, and recorded in the _____ Registry of Deeds in Plan Book _____, Plan _____; [and on a sketch plan attached hereto and filed herewith for registration]] *[note that a full-size plan must be recorded on the unregistered side, even for registered land]*;

WHEREAS, the Property [and the Restricted Area] is [are] subject to covenants, restrictions, easements and other rights and obligations under the terms and conditions of this instrument;

WHEREAS, [a portion of] the Property [is part of] [contains] a federal Superfund Site, known as the _____ Superfund Site (the "Site"). The U.S. Environmental Protection Agency, an agency established under the laws of the United States, having its New England regional office at One Congress Street, Boston, Massachusetts 02114 ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9605, placed the Site on the National Priorities List, set forth at 40.C.F.R. Part 300, Appendix B, by publication in the Federal Register on _____, Fed. Reg. _____, due to a release of hazardous substances, as that term is defined by the Section 104 of CERCLA, 42 U.S.C. § 9604.

WHEREAS, the Massachusetts Department of Environmental Protection, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 ("MassDEP"), as a result of the release of oil and/or hazardous materials at the Property, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended ("Chapter 21E"), has placed [a portion of] the Property on the Massachusetts List of Confirmed Disposal Sites and Locations to be Investigated pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"), has classified [such portion of] the Property as a Tier IA disposal site and has assigned to thereto MassDEP Release Tracking Number(s) _____;

WHEREAS, in a document entitled, "Record of Decision, _____ Superfund Site," dated _____ *[include in this definition any ROD Amendments or Explanations of Significant Differences]* (the "ROD"), said ROD being on file at the United States Environmental Protection Agency, Region I ("EPA") Record Center located at One Congress Street, Boston, Massachusetts, EPA, with the concurrence of MassDEP on _____ *[fill in date of State concurrence letter]*, has selected one or more response actions (collectively, the "Selected Remedy") for the Site in accordance with CERCLA, 42 U.S.C. §§ 9601, *et seq.*, and the National Contingency Plan, 40 CFR §§ 300.1, *et seq.* (the "NCP");

WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with hazardous substances in soil and groundwater; and the restriction of certain uses and activities occurring in, on, through, over or under the Property;

[Using one of the two sample paragraphs below as a model, identify the Performing Party (the person including a federal agency who developed the GERE and is applying to MassDEP to accept it) and the Governing Agreement (the agreement, in addition to the ROD, pursuant to which the Performing Party developed the GERE, such as a consent decree, administrative order on consent, or other agreement; for a fund-lead site, the ROD typically would serve as the Governing Agreement)]

[WHEREAS, _____, a _____ corporation having a mailing address of _____ (the "Performing Party") is performing a portion of the Selected Remedy pursuant to a consent decree (the "Consent Decree" also referred to herein as the "Governing Agreement") entered into with the United States and the Commonwealth of Massachusetts in the [consolidated] actions captioned *U.S. v. _____*, and *Commonwealth of Massachusetts v. _____*, Docket Numbers _____ and _____ (D. Mass.), respectively;]

[WHEREAS, the United States of America, acting through EPA (the "Performing Party"), having entered into a Superfund State contract for _____ *[reference Site and Operable Unit]* with the Commonwealth of Massachusetts, acting through MassDEP, entitled, "_____" and dated _____ on file at each agency, and pursuant to the ROD (also referred to herein as the "Governing Agreement"), is performing the Selected Remedy;

[Include the following paragraph only if MassDEP is a Grantee:]

[WHEREAS, MassDEP, pursuant to Sections 3(a) and 6 of Chapter 21E, is authorized to take all action appropriate to secure to the Commonwealth the benefits of CERCLA and to acquire an interest in real property if necessary to carry out the purposes of Chapter 21E, and is willing to accept this Grant as joint Grantee with the United States or as sole Grantee, as the case may be;]

[in the following paragraph, include a reference to the plan for inspecting and reporting on compliance with the GERE, such plan having been developed as part of the Selected Remedy, pursuant to the Governing Agreement (e.g., a consent decree and associated scope of work)]

WHEREAS, EPA has approved a plan entitled "_____", prepared on behalf of _____, by _____, and dated _____ (the "Compliance Inspection and Reporting Plan"), a copy of which is attached hereto as Exhibit B, and which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts;

[The following paragraph should only be included if Grantor is responsible in Section 5 ("Obligations and Conditions") for performing operations and maintenance described in the

operation and maintenance plan for the Selected Remedy. Also, this paragraph and the preceding paragraph may be combined, if the ROD and/or SOW contemplate that the operation and maintenance plan will incorporate the compliance inspection and reporting plan as a component of it. In such cases, the compliance inspection and reporting plan should at a minimum be separately noted in the combined paragraph.]

[WHEREAS, EPA has approved a plan entitled “_____,” prepared on behalf of _____, by _____, and dated _____ (the “Operation and Maintenance Plan”), a copy of which is attached hereto as ExhibitB-1, and which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts;] [and]

[If EPA entered into a separate agreement with the landowner, add the following paragraph.]

[WHEREAS, Grantor and the United States of America, acting through EPA, entered into an agreement styled “_____,” effective _____, EPA Docket Number CERCLA _____ (the “Agreement”), a copy of which is on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts, in which Grantor agreed to perform certain response actions at the Site, including without limitation to implement environmental restrictions and an access easement such as the within Grant, pursuant to Paragraph ____ (“Access and Institutional Controls”) of the Agreement;]

NOW, THEREFORE, pursuant to the terms and provisions of the Governing Agreement [and _____] *[reference any separate agreement with the landowner]* identified above, [the receipt and sufficiency of which consideration is hereby acknowledged,] _____ (“Grantor”), hereby GIVES, GRANTS and CONVEYS to the [UNITED STATES ON BEHALF OF ITS ENVIRONMENTAL PROTECTION AGENCY] [and the] [MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION] *[MassDEP should be included only if MassDEP agrees to be a Grantee]* ([collectively,] “Grantee”), as a gift, with QUITCLAIM COVENANTS, an ENVIRONMENTAL RESTRICTION (“Restriction”) in, on, through, over and under the Property. Said Restriction is subject to the following terms and conditions:

1. Purpose. It is the purpose of this Grant to establish covenants and restrictions and to convey to Grantee real property rights involving access and enforcement, all of which shall run with the land, to facilitate the remediation of environmental contamination, and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. Applicability. The restrictions set forth in Paragraph 3 (“Restricted Uses and Activities”) shall not apply to:

A. any response action undertaken by EPA or MassDEP, or their respective agents, representatives, contractors, subcontractors or employees, pursuant to CERCLA or Chapter 21E, and their respective implementing regulations [; or]

[B. any response action undertaken by the Performing Party, or its agents, representatives, contractors, subcontractors or employees, in accordance with and pursuant to the Governing Agreement, and any approval by EPA and/or MassDEP required thereunder]; *[if the Performing Party has no obligation to perform response actions or operation and maintenance after this Grant has been recorded, or in the atypical circumstance where there is no Governing Agreement in a non-fund-lead response action, delete this paragraph]*

provided, however, that if any such response action results in a change in the areal extent or grade of any portion of the Property required to be restricted under this instrument to ensure that the Selected Remedy is protective of human health and the environment, or if Grantee otherwise determines that it is necessary or appropriate to amend or partially release this instrument as a result of such response actions, then the person performing such response action shall, in accordance with the requirements of Paragraph 14 ("Amendment and Release"), (i) obtain Grantor's agreement to amend this instrument, including the Plan of Restricted Areas, and/or to partially release this instrument, as applicable, (ii) with Grantor's agreement submit an application to Grantee therefor, and (iii) ensure that all actions necessary to effectuate such an amendment and/or partial release are taken. Further provided, and that for response actions described in Paragraph 2.B., above, all costs of performing the foregoing obligations shall be at the Performing Party's sole cost and expense, notwithstanding the provisions of Paragraph 14 ("Amendment and Release").

3. Restricted Uses and Activities. Except as provided in Paragraph 2 ("Applicability"), Paragraph 4 ("Permitted Uses and Activities") and Paragraph 6 ("Emergency Excavation"), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities in, on, upon, through, over or under [the Property] [the Restricted Area] [each Restricted Area identified below] or any portion thereof, or any of the following uses to be made of [the Property] [the Restricted Area] [each Restricted Area identified below] or any portion thereof:

[if there are multiple restricted areas, identify each such area and list applicable restrictions for each]

[sample restrictions in brackets—site specific restrictions must satisfy the requirements of the Selected Remedy:]

A. [excavation, removal or disposal of any loam, peat, gravel, sand, rock or other mineral or natural resource;]

B. [extraction, consumption or utilization of groundwater underlying the Property for any purpose, including without limitation extraction for potable, industrial, irrigation or agricultural use;]

C. [agricultural use or activity];

D. [residential use or activity;]

E. [day care or, for children under eighteen (18) years of age, educational use or activity;]

F. [recreational use or activity;]

G. [hotel or motel use or activity;]

H. [commercial use or activity;]

I. [industrial use or activity;]

J. _____ [*list any other restricted uses and/or activities;*] and

K. any use or activity which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including but not limited to cap(s), cover(s) or other ground covering features of response actions conducted to implement the Selected Remedy; [systems to collect, contain, treat, and discharge groundwater]; [systems or containment areas to excavate, store, treat, and dispose of soils and sediments]; and [systems and studies to monitor implementation of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater, soils, and sediments, and to ensure that the remedial action is effective in the long-term and protective of human health and the environment]. Reference is made to the Plan of Restricted Areas [and to the As-Built Records, on file on file at the EPA Record Center located at One Congress Street, Boston, Massachusetts], which provide(s) information about the location within the Property and engineering details, respectively, of certain of the foregoing components of the Selected Remedy. [*include references to important site-specific components of the Selected Remedy, including where detailed information about them may be found*]

4. Permitted Uses and Activities. Grantor expressly reserves the right to perform, suffer, or allow, or to cause any person to perform (i) any use or activity in, on, upon, through, over, or under the Property that is not listed in Paragraph 3 ("Restricted Uses and Activities") of this Grant; and (ii) any of the following activities in, on, upon, through, over or under the [the Property] [the Restricted Area] [each Restricted Area identified below], or any portion thereof, or any of the following uses to be made of the [the Property] [the Restricted Area] [each Restricted Area identified below], or any portion thereof:

[*if there are multiple restricted areas, each with its own set of permitted uses and activities, then identify each such area and list its permitted uses and activities*]

[*sample permitted uses and activities:*]

[A. Notwithstanding the restriction on excavation set forth in Paragraph 3.A, above, excavation, unless such excavation would permanently modify the areal extent or grade of the [Property] [Restricted Area], is permitted, subject to the following:

[identify any requirements including any applicable health and safety, soil management or ground water/surface water management protocols (attach protocols as appendices and incorporate by reference)]

- (i) _____;
- (ii) _____; and
- (iii) _____;]

[B. Notwithstanding the restriction on _____ set forth in Paragraph 3__, above, such activities and uses as may be required to perform the requirements of the Operation and Maintenance Plan set forth in Paragraph 5.A;]

[C. Notwithstanding the restriction on _____ set forth in Paragraph 3__, above, such activities and uses as may be required to perform the requirements of the Restriction Compliance Inspection Plan set forth in Paragraph 5.B;] and

[D. *list any other permitted uses and/or activities;*]

E. The provisions of this Paragraph 4 ("Permitted Uses and Activities") shall not release Grantor or any other party from liability for releases of oil or hazardous substances, nor shall this provision excuse Grantor or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, State or local laws, regulations or ordinances.

5. Obligations and Conditions. Grantor affirmatively agrees to perform the following activities [and][or] to maintain the following conditions at the Restricted Area in order to maintain the [Selected Remedy]:

A. [The following requirements of the Operations and Maintenance Plan:

- (i) _____;
- (ii) _____; and
- (iii) _____;]

B. [The following requirements of the Restriction Compliance Inspection Plan:

- (i) _____;
- (ii) _____; and
- (iii) _____;]

C. *[insert other specific activities and conditions set forth in the Governing Agreement or other applicable document, if any]*

6. Emergency Excavation. If it becomes necessary to excavate within the Restricted Area as part of a response to an emergency (e.g., repairing utility lines or responding to a fire or flood), and such excavation could result in a significant risk of harm from exposure to the hazardous substances located within the Restricted Area, the requirements of Paragraph 3.A of this Grant shall be suspended with respect to such excavation for the duration of such response, provided that Grantor:

A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:

i. EPA Office of Site Remediation and Restoration, Emergency Planning and Response Branch; and

ii. MassDEP _____ Regional Office of Emergency Response Section;

or such other persons as [either] Grantee, [respectively], may identify in writing, from time to time, to Grantor for such emergency response notifications;

B. notifies [each] Grantee in writing of such emergency no later than five (5) days after having learned of such emergency [, with a copy to the Performing Party];

C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

D. implements all measures necessary to limit actual or potential risk to the public health and environment [, including the following:

i. _____;

ii. _____; and

iii. _____;]

E. engages a qualified environmental professional satisfactory to EPA, unless MassDEP is a Grantee, in which case Grantor must instead engage a hazardous waste site cleanup professional, who is a "Licensed Site Professional" ("LSP") as defined in the MCP at 310 CMR 40.0006(12), to oversee the implementation of this Paragraph, and to prepare and oversee the implementation of a written plan which will restore the [Property] [Restricted Area] to a condition which meets or exceeds the performance standards established under the ROD for the Selected Remedy and which is consistent with this Restriction, and to review and evaluate response actions contained in said plan to ensure minimal disturbance of the contaminated soils; Grantor to implement said plan as soon as reasonably possible following such emergency; and a copy of said plan to be submitted to MassDEP and EPA, within ten (10) days of its performance, with a statement from the LSP confirming that the [Property] [Restricted Area] has been restored to the standard described above.

7. Easements. In establishing this Restriction, Grantor hereby grants the following easements for the term of this Grant to [each] Grantee, its [their] agents, contractors, subcontractors, and employees:

A. to pass and repass over the Property for purposes of inspecting the [Property] [Restricted Area] to insure compliance with the terms of this Restriction and for purposes of conducting the activities described in Paragraph 7.B, below; and

B. in, on, through, over and under the [Property] [Restricted Area] for purposes of conducting subsurface investigations, installing groundwater monitoring wells, and conduct other investigations of the [Property] [Restricted Area] and/or response actions consistent with (i) CERCLA and the NCP and/or (ii) Chapter 21E and the MCP, related to the Selected Remedy and/or to the Governing Agreement.

[The following paragraph is NOT intended to be part of this model Grant and should only be included in the special circumstance where the Property is both (i) situated in Iron Horse Park Operable Unit 3 Area of Concern 3 (B&M Locomotive and Shop Disposal Areas) or Area of Concern 5 (Contaminated Soils Area) and (ii) contains an active rail yard.]

C. the exercise of such rights as are granted in the easements established in this Paragraph 7. A and 7.B, above, being subject to the railroad safety protocol set forth in Exhibit C ("Railroad Safety Protocol") attached hereto; provided, however, that [each] Grantee fully reserves all applicable rights under Chapter 21E, the MCP, CERCLA and/or the NCP.

8. Construction. This instrument shall be liberally construed to effect its purpose and the policies and purposes of CERCLA and/or Chapter 21E. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid. Any word or defined term contained in this instrument shall be read as singular, plural, masculine, feminine or neuter as the context so requires.

9. Severability. Grantor hereby agrees, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:

A. that any such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or

B. that any such provision that, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included.

In either case, the remaining provisions of this instrument shall remain in full force and effect.

10. Enforcement.

A. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

i. the assessment of penalties and other action by [each] Grantee, and its [their] respective successors and assigns, to enforce the terms of this instrument, pursuant to CERCLA and/or M.G.L. c. 21E, and their respective implementing regulations, and other law and regulations, as applicable; and

ii. upon a determination by a court of competent jurisdiction, the issuance of criminal and civil penalties, and/or equitable remedies which could include the issuance of an order to modify or remove any improvements constructed in violation of the terms of this instrument at Grantor's sole cost and expense, and/or to reimburse [each] Grantee for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this instrument.

B. Notwithstanding any other provision of this instrument, all rights and remedies (including without limitation sanctions and penalties) available hereunder shall be in addition to, but not in lieu of, any and all rights and remedies (including without limitation sanctions and penalties) at law or in equity, including under CERCLA or Chapter 21E, [and/or pursuant to the Governing Agreement,] which rights and remedies [each] Grantee fully reserves. Enforcement of the terms of this instrument shall be at the discretion of [each] Grantee, and any forbearance, delay or omission to exercise its [their respective] rights under this instrument shall not be deemed to be a waiver by [either] Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of [either] Grantee under this instrument.

11. Provisions to Run With the Land. This Restriction establishes certain rights, liabilities, agreements and obligations for the Property, or any portion thereof, that shall run with the Property, or any portion thereof, for the term of this Restriction. Grantor hereby covenants for himself/herself/itself and his/her/its executors, administrators, heirs, successors and assigns to stand seized and hold title to the Property, or any portion thereof, subject to this Restriction.

The rights granted to [each] Grantee, its [their] successors and assigns, do not provide, however, that a violation of this Restriction shall result in a forfeiture or reversion of Grantor's title to the Property.

12. Concurrence Presumed. It is agreed that:

A. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions of this document; and

B. all such parties and any party claiming by, through, or under them, and their respective agents, contractors, sub-contractors and employees, also agree that the Restriction herein established shall not be violated and that their respective interests in the [Property] [Restricted Area] shall be subject to the provisions herein set forth.

13. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. Grantor hereby agrees to incorporate this Restriction, in full or by reference, into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property, or any portion thereof, is conveyed.

14. Amendment and Release.

A. Amendment. This instrument, including without limitation any of its Exhibits, or the Plan of Restricted Area, may be amended only with the prior, written approval of Grantee. Grantor may propose to Grantee, with a copy to the Performing Party, an amendment of a use or activity restriction set forth in Paragraph 3 ("Restricted Uses and Activities"), or of a permitted use or activity set forth in Paragraph 4 ("Permitted Uses and Activities"), based upon changed circumstances including without limitation new analytic and engineering data. In the event that Grantor requests such an amendment, Grantor shall comply with such requirements as Grantee may identify for that purpose. Grantor agrees to cooperate with Grantee if it becomes necessary to modify this instrument in order to maintain the continued effectiveness of the Selected Remedy. All amendments shall include [each] Grantee's signed approval and shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office. MassDEP will provide notice to EPA prior to approving an amendment to the Grant. Such notice shall not be a condition of or a requirement for any such amendment to be effective.

B. Release. [Each] Grantee may release its [respective] interest in the Grant, in whole or in part, in its [respective] sole discretion. MassDEP will provide notice to EPA prior to releasing its interest in the Grant. Such notice shall not be a condition of or requirement for any such release to be effective. This Grant shall not be deemed released unless and until [each] Grantee has released its [respective] interest hereunder. Any such release(s) shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office.

C. Recording and/or Registration. Grantor hereby agrees to record and/or register with the appropriate registry of deeds and/or land registration office any amendment to and/or release of this instrument, or other document created pursuant to this instrument for which such recording and/or registration is required, within thirty (30) days of the date of having received from Grantee(s) any such amendment, release or other such document executed by [each] Grantee and/or evidencing [each] Grantee's approval, as appropriate, in recordable form. No more than thirty (30) days from the date of such recording and/or registering of said amendment, release and/or other such document, Grantor shall provide a certified registry copy of the amendment, release and/or other such document to [each] Grantee, with a copy to the Performing Party. At that time, or as soon thereafter as it becomes available, Grantor shall provide [each] Grantee with the final recording and/or registration information for the amendment, release, and/or other such document, certified by said registry. Grantor shall pay any and

all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

D. Notice to Local Officials. In accordance with the requirements set forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after recording and/or Registering any such amendment, release, or other such document, Grantor shall: (i) provide the [City] [Town] of _____ Chief Municipal Officer, Board of Health, Zoning Official and Building Code Enforcement Official with copies of such recorded and/or registered amendment, release or other such document; (ii) publish a legal notice indicating the recording and/or registering of such amendment, release or other such document, and including the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which circulates in the [City] [Town] of _____; and (iii) provide copies of said legal notice to [each] Grantee within seven (7) days of its publication.

15. Payment of Future Costs. Grantor shall pay all costs incurred by Grantee not inconsistent with CERCLA or Chapter 21E, as applicable, including attorneys fees and interest, in connection with any request by Grantor for an approval, review or other action by Grantee pursuant to the terms of this instrument, including without limitation (i) an approval, including any presumptive approval, pursuant to Paragraph 4 ("Permitted Uses and Activities") of this instrument and (ii) for an approval, pursuant to Paragraph 14 ("Amendment and Release") of this instrument. Such costs shall be due and payable within thirty (30) calendar days of receipt of demand. Grantee reserves the right to issue any determination that may be appropriate in response to any such request from Grantor only upon receipt of payment in full of such costs.

16. No Dedication Intended. Nothing herein shall be construed to be a gift or dedication of the Property to [either] Grantee or to the general public for any purpose whatsoever.

17. Term. This Restriction shall run [in perpetuity] [for a period of ____ years] and is intended to conform to M.G.L. c. 184, § 26, as amended.

18. Notices.

A. General. Any notice, delivery or other communication permitted or required under this instrument, unless otherwise provided in this instrument, shall be in writing and sent by reliable overnight delivery service, delivered in hand or mailed by postage-paid registered or certified mail, return receipt requested. Notices or other communications shall be deemed given, if by overnight delivery service, on the first business day following deposit with such delivery service; if by hand, on the date of the receipt evidencing the hand delivery thereof; or, if by registered or certified mail, three (3) days after deposit in the United States mails; provided that notice of change of address shall be deemed effective only upon receipt.

B. EPA and MassDEP. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to Grantee, EPA and/or MassDEP, as the case may be, it shall be directed to both EPA and MassDEP, to the individuals at the addresses specified below, or as otherwise directed in writing by EPA and/or MassDEP, respectively.

As to EPA:

EPA Remedial Project Manager

Superfund Site

United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100, Mailcode HBO
Boston, MA 02114

and to:

EPA Enforcement Counsel

Superfund Site

United States Environmental Protection Agency, Region I
One Congress Street, Suite 1100, Mailcode SES
Boston, MA 02114

As to MassDEP:

Bureau of Waste Site Cleanup

Department of Environmental Protection

One Winter Street, ___th Floor

Boston, MA 02108

Attention: _____ Superfund Site Project Manager

[C. Performing Party. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to the Performing Party, it shall be directed to the individual at the address specified below, or as otherwise directed in writing by the Performing Party:

Attention: Coordinator for _____ Superfund Site]

19. Assignment. This Grant, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of [either] Grantee, herein contained, shall be freely assignable by [either] Grantee, in whole or in part, at any time. MassDEP will provide notice to EPA prior to assigning its interest in the Grant. Such notice shall not be a condition of or requirement for any such assignment to be effective.

20. Rights Reserved. Acceptance of this Restriction shall not operate to bar, diminish, nor in any way affect any legal or equitable right of [either] Grantee to issue any future order with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which [either] Grantee may have with respect to the Site.

21. Governing Law; Captions. This instrument shall be governed by and interpreted in accordance with the laws of the United States and of the Commonwealth of Massachusetts, as applicable. All captions and headings contained in this instrument are for convenience of reference only, and shall not be used to govern or interpret the meaning or intent of any provision of this document.

22. Effective Date. This Restriction shall become effective upon its recordation with the appropriate registry of deeds and/or land registration office.

No more than thirty (30) days from the date of recording and/or registration, Grantor shall provide [each] Grantee with a certified registry and/or land registration office copy of this instrument. At that time, or as soon as practicable thereafter, Grantor shall provide [each] Grantee with a copy of this instrument, as recorded, certified by said registry and/or land registration office.

As this Restriction is a gift, no Massachusetts deed excise stamps are affixed hereto, none being required by law.

WITNESS the execution hereof under seal this ____ day of _____, 20__.

[Name of Grantor]

GRANTOR

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public:

My Commission Expires:

[Include the following paragraph only if MassDEP is a Grantee:]

In accordance with M.G.L. c. 21E, § 6, as amended, the Commissioner of the Department of Environmental Protection hereby approves this Grant of Environmental Restriction and Easement (as to form only).

Date: _____

Commissioner

Department of Environmental Protection

[Include the following paragraph only if MassDEP is a Grantee:]

Upon recording, return to:

Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 8th Floor
Boston, MA 02108

Attention: _____ Site Project Manager

List of Exhibits

Exhibit A	Legal Description of the Property
[Exhibit A-1	Legal Description of the Restricted Area]
Exhibit B	Compliance Inspection and Reporting Plan
[Exhibit B-1	Operation and Maintenance Plan]
[Exhibit C	Railroad Safety Protocol]

Exhibit C

Railroad Safety Protocol

This Exhibit C is an attachment to a Grant of Environmental Restriction and Easement (Grant) running from [the Massachusetts Bay Transportation Authority (MBTA)] [Boston & Maine Corporation (B&M)] [*choose the applicable Grantor*] (Grantor) to _____ (Grantee). The Grant establishes certain easement rights in the Property (the Property being defined in said Grant), while Paragraph 7.C of the Grant subjects the exercise of those rights to this Railroad Safety Protocol. A portion of the Property more particularly described in the attached description and shown on the attached plan (the "Premises") [*attach legal description or other acceptable description and sketch plan of that portion of the Property which is both [(a) situated within Iron Horse Park OU3 Area of Concern 5 (AOC 5) (Contaminated Soils Area) and (b) contains an active rail yard] or [(a) situated within Iron Horse Park OU3 Area of Concern 3 (AOC 3) (B&M Locomotive Shop Disposal Area) and (b) contains an active rail line] where this Protocol will apply*] is [an active railroad yard] [active railroad line] operated by Boston & Maine Corporation (B&M). The following railroad safety protocol shall apply to the exercise of the aforesaid easement rights to access the Premises, but not to the exercise of such rights to access any other portion of the Property:

1. Except in an emergency, Grantee or its designee shall provide ten (10) calendar days' prior written notice of (a) the date it desires to enter the Premises, (b) the individuals who wish to enter on its behalf, (c) a general description of the activity or work to be performed on the Premises, (d) the type of equipment, if any, that will be used to perform the activity, and (e) the location(s) within the Premises where such activity or work is to be performed.
2. a. Such notice shall be given to B&M in writing which shall include by e-mail to: Roger Bergeron, Vice President of Special Projects, Pan Am Railway, Iron Horse Park, High Street, North Billerica, MA 01862, phone 978-663-6918, fax 978-663-6907, e-mail rbergeron@panamrailways.com. (Note: Pan Am Railway is affiliated with B&M and acting as its agent for purposes of this protocol.)

b. Mr. Bergeron or other B&M agent shall notify the MBTA by forwarding the Grantee's written notice as follows: Patricia Barrett, License Administrator, Transit Realty Associates, 20 Winthrop Square, 2nd Fl, Boston, MA 02110, telephone 617-482-2525, ext. 228. (Note: Transit Realty Associates ("TRA") is the agent for the MBTA for purposes of this protocol.) Provided, however, that Grantee's access shall not be contingent upon such notification by B&M to the MBTA.

c. B&M shall provide Grantee thirty (30) days advance written notice of any change in the contact designated in paragraph 2.a, above, including by virtue of any change in operator of the active railroad yard. Upon Grantee's receipt thereof, the identity of the contact listed in paragraph 2.a above shall be deemed so modified for purposes of this Protocol, without further action by any party.
3. If Grantee or its designee requires emergency access, Grantee shall as soon as possible contact B&M at 800-955-9208 which shall promptly take all reasonable steps necessary to accommodate such request. B&M shall promptly the next business day contact MBTA Director of Environmental Affairs Andrew Brennan at 617-222-3126 to inform the MBTA of the emergency request for access. Provided, however, that Grantee's emergency access shall not be contingent upon such notification by B&M to the MBTA.
4. a. If the activity or work to be performed will **not** be closer than fifty (50) feet from the edge of any rail line within the Premises, then the Grantee or its designee may conduct such work without any further safety precautions, provided at least one person entering the Premises has received the roadway worker protection ("RWP") training described in paragraph 4.c, below.

- b. If the activity or work to be performed includes any activity or work within 50 feet of the edge of any rail line within the Premises, then B&M may prescribe such additional safety precautions as are reasonably necessary and customary in such circumstances, in order for Grantee safely to perform the work. To the extent that the MBTA wishes to participate in identifying such safety precautions, the MBTA shall coordinate with B&M; B&M shall serve as the point of contact with Grantee for such purposes. B&M and the MBTA, to the extent the MBTA identifies any additional safety precautions, shall promptly perform or arrange for the performance of the same, at B&M's or the MBTA's respective sole cost and expense. Such additional safety precautions may include but are not limited to: requiring that all of the persons entering the Premises have the RWP training described in paragraph 4.c, below; the use of a flagman; or the rerouting of rail traffic.
- c. For purposes of this Protocol, RWP training shall consist of such minimal training as may be required pursuant to 49 Code of Federal Regulations 214.345. B&M and/or the MBTA shall identify and/or provide such training upon request from Grantee or its designee. All costs of such training shall be funded by B&M and /or the MBTA, whether provided by B&M or the MBTA, or obtained independently by Grantee or its designee.
- d. If B&M does not respond to Grantee's or its designee's notice within the ten (10) calendar day notice period under Paragraph 1 above or promptly after notification of an emergency under Paragraph 3 above, Grantee or its designee may perform the work at the Premises in the manner set forth in the notice.
5. Upon entry to the Premises and upon completion of work each day, Grantee or its designee shall notify an on-site B&M representative, whom B&M shall ensure is present, that Grantee has arrived and has departed, as the case may be, from the Premises. Grantee or its designee may not reenter the work area after departing the Premises, until such time as the Grantee or its designee has notified a B&M representative that Grantee or its designee desires to reenter that work area. MBTA may have an observer present at all times when Grantee or its designee is present on the Premises.
6. Grantee fully reserves, and this protocol is without prejudice to, all applicable rights under Chapter 21E, the MCP, CERCLA and/or the NCP, as such terms are defined in the aforesaid Grant.
7. B&M, as operator of AOC 5, [B&M, as owner of AOC 3] and Pan Am Railway, as its agent, and MBTA [only with respect to AOC 5], indicate their agreement to the foregoing by their duly authorized signatures, below.

BOSTON AND MAINE CORPORATION

PAN AM RAILWAY

By _____

By _____

Its _____,
Duly Authorized.

Its _____,
Duly Authorized.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

By _____

Its _____
Duly Authorized [Only with respect to AOC 5]